

# Committee on Resources

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## Witness Testimony

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**STATEMENT OF FRANKLIN DUCHENEAUX  
BEFORE THE COMMITTEE ON RESOURCES OF THE  
HOUSE OF REPRESENTATIVES  
May 1, 1997**

Mr. Chairman, my name is Franklin Ducheneaux. I am a partner in the consulting firm of Ducheneaux, Taylor & Associates.

I have been asked to testify today on certain laws affecting gaming by the Narragansett Tribe of Rhode Island because of my prior service on the staff of this Committee, then known as the Committee on Interior and Insular Affairs, during the time of the consideration of legislation enacted as the 1978 Rhode Island Indian Claims Settlement Act and the 1988 Indian Gaming Regulatory Act.

I served as Counsel on Indian Affairs to this Committee from 1973 through 1990. The last 14 years of that service was directly under former Chairman Morris K. Udall when the Indian affairs jurisdiction was held in the full Committee. My brief statement today will relate to the relevant history of the enactment of the IGRA.

Gaming by tribes became a hot political issue as early as 1983 when Mr. Udall introduced the first bill on the subject. By the time of the convening of the 100th Congress, the issue had become extremely controversial in the Congress, with a growing polarization of the interests.

Early in the 100th Congress, on February 25, 1987, the Supreme Court handed down its decision in the case of *California v. Cabazon Band of Mission Indians*, which fully upheld the right of Indian tribes, under certain circumstances, to engage in, or regulate, gaming on their lands free of State regulation. This favorable decision for the tribes shocked both sides, and created an atmosphere for eventual legislative agreement.

Legislative efforts proceeded in both Houses throughout the first session of the 100th Congress without much success. There were strong forces operating in both Houses supporting legislation to ban gaming by tribes.

Chairman Udall's position, however, was strong, continuing and unequivocal. Mo made clear that he was strongly opposed to gambling and, in particular, he opposed government gambling. However, he was equally strong in his support for tribal sovereignty and the right of tribal self-government. He strongly agreed with the *Cabazon* decision that, if a State permitted or engaged in gaming, tribes in that state had a right to do so free of state regulation.

Early in the second session, Mo advised me that, while he felt he could still control the issue in the Committee, he probably could not control matters on the floor if his bill, H. R. 2507, was reported from the Committee. As a consequence, an informal agreement of the parties was reached which contemplated negotiations on a Senate bill. If the parties could agree on a bill for Senate passage, Mo agreed that he would ask that it be held at the desk without Committee referral and passed under suspension of the rules.

However, the opposite was also part of his agreement. If the Senate bill was not acceptable, he would insist upon referral to the committee in the normal course.

Negotiations went on for the first part of 1988. Parties involved included House and Senate members, committee and member staff, Administration officials, representatives of State governments, non-Indian gaming industry representatives, and others. Chairman Udall authorized me, subject to his general direction, to represent him in those discussions.

On May 13th, the Senate Committee marked the bill up and ordered it reported. Chairman Udall did not find the bill, as marked up, acceptable. Further negotiation went on and, by late July, we had arrived at language which, with few exception, was acceptable to Mr. Udall. The Senate Committee filed its report on this compromise bill on August 3rd. Despite Chairman Udall's explicit objection, this bill contained section 23 which was unfavorable to the Narragansett.

On September 15th, the Senate passed the bill with an amendment which, among other things, struck out section 23 dealing with the Narragansett. With these amendments, the bill was acceptable to Mr. Udall.

Pursuant to the general agreement, Mr. Udall had the bill held at the desk without referral while interested House members reviewed the Senate-passed bill. On September 26th, S. 555 passed the House under suspension of the rules, and was signed into law on October 17, 1988.

Mr. Chairman, I would close my testimony with a quote from Chairman Udall's floor statement at the time of the passage of S. 555:

"S. 555 is the culmination of nearly 6 years of congressional consideration of this issue. The basic problem which has prevented earlier action by Congress has been the conflict between the right of tribal self-government and the desire for State jurisdiction over gaming activity on Indian lands.

"On July 6, I inserted a statement in the Record which set out my position on this bill. I stated that I could not support the unilateral imposition of State jurisdiction over Indian tribal governments. I did state, however, that I remained open to reasonable compromises on the issue.

"S. 555 is such a compromise, hammered out in the Senate after considerable debate and negotiations. It is a solution which is minimally acceptable to me and I support its enactment . . . . While the Interior Committee did not consider and did not report S. 555, certain members and committee staff did participate very actively in negotiations in the Senate which gave rise to the compromise of S. 555."

Mr. Chairman, this concludes my statement and I would be happy to answer any questions the Committee may have.

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